

21
1:987
Rules
suppl.
C-2

THE GENERAL STATUTES OF NORTH CAROLINA

RULES

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

A.D. KOWALSKY, S.C. WILLARD, W.L. JACKSON,
AND K.S. MAWYER

JUNE 1987 SUPPLEMENT

Place Inside Back Cover of 1987 Rules Volume.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1987

COPYRIGHT © 1987
BY
THE MICHIE COMPANY

All rights reserved.

Preface

This June 1987 Supplement to the 1987 edition of the Annotated Rules of North Carolina contains provisions of the rules set out therein which have been added, amended, or deleted by orders promulgated through May 1, 1987. It also contains annotations supplemental to those appearing in the 1987 edition. For a complete scope of the contents of the 1987 edition, see pages v and vi thereof.

This supplement has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

LACY H. THORNBURG
Attorney General

June 1, 1987

Annotations:

Source of annotations to the rules of practice in all courts:

North Carolina Reports through Volume 319, p. 109.

North Carolina Court of Appeals Reports through Volume 84, p. 149.

South Eastern Reporter 2nd Series through Volume 353, p. 798.

Federal Reporter 2nd Series through Volume 813, p. 411.

Federal Supplement through Volume 654, p. 185.

Federal Rules Decisions through Volume 113, p. 688.

Bankruptcy Reports through Volume 70, p. 623.

Supreme Court Reporter through Volume 107, p. 1514.

North Carolina Law Review through Volume 65, p. 644.

Wake Forest Law Review through Volume 22, p. 166.

Campbell Law Review through Volume 9, p. 206.

Duke Law Journal through 1986, p. 1088.


North Carolina Central Law Journal through Volume 16, p. 83.

Opinions of the Attorney General.

Table of Contents

Federal Rules

	PAGE
Local Rules of the United States Court of Appeals for the Fourth Circuit	15
Index	19
Internal Operating Procedures of the United States Court of Appeals for the Fourth Circuit	21
Index	27
Plan of the United States Court of Appeals for the Fourth Circuit	29
Index	37
Rules of the United States District Court for the Eastern District of North Carolina	39
Index	41
Rules of the United States District Court for the Middle District of North Carolina	43
Index	47
Rules of the United States Bankruptcy Court for the Middle District of North Carolina	49
Index	51



Digitized by the Internet Archive
in 2023 with funding from
State Library of North Carolina

GENERAL RULES OF PRACTICE FOR THE SUPERIOR AND DISTRICT COURTS

Adopted Pursuant to G.S. 7A-34
Effective July 1, 1970

2. Calendaring of Civil Cases.

CASE NOTES

Failure to Timely Calendar Motion. — Since civil cases in this State are ordinarily deemed ready for trial five months after filing, and motion for removal could have been calendared for hearing at many earlier court sessions, defendant's failure to put its motion on a hearing calendar until eight months after the case was filed, the hearing date being two months later, was unreasonable and thus a waiver of its right to have the case removed to a different county. *Johnson v. Hampton Indus., Inc.*, — N.C. App. —, 349 S.E.2d 332 (1986).

6. Motions in Civil Actions.

CASE NOTES

Cited in *In re Estate of English*, — N.C. App. —, 350 S.E.2d 379 (1986).

ORDER CONCERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE, OF PUBLIC JUDICIAL PROCEEDINGS

Editor's Note. — The order concerning electronic media and still photography coverage of public judicial proceedings was further extended through and including June 30, 1987, by order of the Supreme Court on December 16, 1986.

RULES FOR COURT-ORDERED ARBITRATION IN NORTH CAROLINA

Adopted August 28, 1986.

Effective January 1, 1987.

COURT-ORDERED ARBITRATION

Rule 1

Actions Subject to Arbitration

Legal Periodicals. — For article, "Court- and the Nation," see 21 Wake Forest L. Rev.
Ordered Arbitration Comes to North Carolina 901 (1986).

NORTH CAROLINA RULES OF APPELLATE PROCEDURE

Adopted June 13, 1975.

Editor's Note. — The Drafting Committee Notes, the official commentaries printed under the individual Rules, have been printed by the publisher as received, without editorial

change. Subsequent amendments to the Rules may not be reflected in these commentaries in some instances.

ARTICLE I. APPLICABILITY OF RULES

Rule 2

Suspension of Rules

CASE NOTES

Applied in *Little v. City of Locust*, — N.C. App. —, 349 S.E.2d 627 (1986); *State v. Callahan*, — N.C. App. —, 350 S.E.2d 128 (1986);

State v. Hooper, — N.C. —, 351 S.E.2d 286 (1987); *State v. Reese*, — N.C. —, 353 S.E.2d 352 (1987).

ARTICLE II. APPEALS FROM JUDGMENTS AND ORDERS OF SUPERIOR COURTS AND DISTRICT COURTS

Rule 3

Appeal in Civil Cases — How and When Taken

CASE NOTES

I. IN GENERAL.

The provisions of § 1-279 and this rule are jurisdictional, etc. —

In accord with third paragraph in the main volume. See *L. Harvey & Son Co. v. Shivar*, — N.C. App. —, 351 S.E.2d 335 (1987).

Rule 4

Appeal in Criminal Cases — How and When Taken

CASE NOTES

I. IN GENERAL.

Cited in *State v. Thompson*, — N.C. —, 348 S.E.2d 798 (1986).

Rule 9

The Record on Appeal

CASE NOTES

I. IN GENERAL.

Cited in *Burriss v. Heavner*, — N.C. App.

—, 350 S.E.2d 897 (1986); *L. Harvey & Son Co. v. Shivar*, — N.C. App. —, 351 S.E.2d 335 (1987).

Rule 10

Exceptions and Assignments of Error in Record on Appeal

CASE NOTES

I. IN GENERAL.

Plain Error Not Shown. —

In prosecution for assault with a deadly weapon inflicting serious injury, while the trial court should have included an instruction that defendant had no duty to retreat in his own home, the failure to give such an instruction did not constitute "plain error" under the circumstances. *State v. Lilley*, — N.C. —, 348 S.E.2d 788 (1986).

In light of the fact that the trial court (1) repeatedly instructed the jury that they had to find that the defendant acted with malice in order to find him guilty of second-degree murder, and (2) instructed the jury that if the State failed to prove the defendant acted with malice, then defendant could be guilty of no more than voluntary manslaughter, the court's misstatement that second degree murder was killing without malice in the final mandate did not constitute plain error. *State v. Jones*, — N.C. App. —, 351 S.E.2d 122 (1986).

The review of the evidence and the statement of the parties' contentions are a "portion of the jury charge" and come within the purview of subdivision (b)(2) of this rule. *Green Hi-Win Farm, Inc. v. Neal*, — N.C. App. —, 349 S.E.2d 614 (1986).

Applied in *State v. Thompson*, — N.C. —, 348 S.E.2d 798 (1986); *Spence v. Jones*, — N.C.

App. —, 348 S.E.2d 819 (1986); *State v. Monroe*, — N.C. App. —, 349 S.E.2d 315 (1986); *La Notte, Inc. v. New Way Gourmet, Inc.*, — N.C. App. —, 350 S.E.2d 889 (1986); *WXQR Marine Broadcasting Corp. v. JAI, Inc.*, — N.C. App. —, 350 S.E.2d 912 (1986); *Hill v. Hill*, — N.C. App. —, 351 S.E.2d 108 (1986); *State v. Strickland*, — N.C. —, 351 S.E.2d 281 (1987); *White v. Lowery*, — N.C. App. —, 352 S.E.2d 866 (1987); *Campbell ex rel. McMillan v. Pitt County Mem. Hosp.*, — N.C. App. —, 352 S.E.2d 902 (1987); *Taylor v. Walker*, — N.C. App. —, 353 S.E.2d 239 (1987).

Quoted in *Seawell v. Continental Cas. Co.*, — N.C. App. —, 352 S.E.2d 263 (1987).

Cited in *Overcash v. Statesville City Bd. of Educ.*, — N.C. App. —, 348 S.E.2d 524 (1986); *Williams v. Burlington Indus., Inc.*, — N.C. —, 349 S.E.2d 842 (1986); *State v. Holland*, — N.C. —, 350 S.E.2d 56 (1986); *Carothers v. Ti-Caro*, — N.C. App. —, 350 S.E.2d 95 (1986); *State v. Callahan*, — N.C. App. —, 350 S.E.2d 128 (1986); *State v. Hooper*, — N.C. —, 351 S.E.2d 286 (1987); *Laumann v. Plakakis*, — N.C. App. —, 351 S.E.2d 765 (1987); *In re Jackson*, — N.C. App. —, 352 S.E.2d 449 (1987); *State v. Etheridge*, — N.C. —, 352 S.E.2d 673 (1987); *State v. Clemmons*, — N.C. —, 353 S.E.2d 209 (1987); *Travis v. Knob Creek, Inc.*, — N.C. App. —, 353 S.E.2d 229 (1987).

Rule 13

Filing and Service of Briefs

CASE NOTES

Cited in *Taylor v. Walker*, — N.C. App. —, 353 S.E.2d 239 (1987).

ARTICLE III. REVIEW BY SUPREME COURT OF APPEALS ORIGINALLY DOCKETED IN COURT OF APPEALS: APPEALS OF RIGHT; DISCRETIONARY REVIEW

Rule 14

Appeals of Right from Court of Appeals to Supreme Court Under G.S. 7A-30

Editor's Note. — The 1981 amendment to Rule 28 eliminated the right to incorporate by reference any argument contained in a brief filed in the Court of Appeals, which was formerly contained in subsection (d) of that Rule.

The reference to Rule 28(d) in the original Drafting Committee Note under Rule 14 in the main volume no longer reflects the current version of Rule 28.

Rule 16

Scope of Review of Decisions of Court of Appeals

CASE NOTES

Scope of Review Limited, etc. —

When an appeal is taken pursuant to § 7A-30(2), the scope of the Supreme Court's review is properly limited to the issue upon which the dissent in the Court of Appeals di-

verges from the opinion of the majority. *State v. Hooper*, — N.C. —, 351 S.E.2d 286 (1987).

Cited in *State v. Lilley*, — N.C. —, 348 S.E.2d 788 (1986).

ARTICLE V. EXTRAORDINARY WRITS

Rule 21

Certiorari

CASE NOTES

I. IN GENERAL.

Applied in *Coleman v. Interstate Cas. Ins. Co.*, — N.C. App. —, 352 S.E.2d 249 (1987).

Cited in *Leonard v. Hammond*, 804 F.2d 838 (4th Cir. 1986).

Rule 23

Supersedeas

CASE NOTES

Cited in *Leonard v. Hammond*, 804 F.2d 838 (4th Cir. 1986).

ARTICLE VI. GENERAL PROVISIONS

Rule 27

Computation and Extension of Time

CASE NOTES

Cited in *Taylor v. Walker*, — N.C. App. —, 353 S.E.2d 239 (1987).

Rule 28

Briefs: Function and Content

CASE NOTES

I. IN GENERAL.

Review Confined to Exceptions Pertaining to Argument Presented. — The Rules of Appellate Procedure require that review be confined to those exceptions which pertain to the argument presented. In *re Will of Hester*, — N.C. App. —, 353 S.E.2d 643 (1987).

Applied in *Harris v. Duke Power Co.*, — N.C. App. —, 349 S.E.2d 394 (1986); *Facet Enters., Inc. v. Deloatch*, — N.C. App. —, 350 S.E.2d 906 (1986); *Hill v. Hill*, — N.C. App. —, 351 S.E.2d 108 (1986); *State v. Newcomb*, — N.C. App. —, 351 S.E.2d 565 (1987); *Chemical*

Realty Corp. v. Home Fed. Sav. & Loan Ass'n, — N.C. App. —, 351 S.E.2d 786 (1987); *Harvey v. Harvey*, — N.C. App. —, 351 S.E.2d 842 (1987); *State v. Williams*, — N.C. —, 352 S.E.2d 428 (1987); *Wagner v. R, J & S Assocs.*, — N.C. App. —, 353 S.E.2d 234 (1987); *Taylor v. Walker*, — N.C. App. —, 353 S.E.2d 239 (1987).

Cited in *Spence v. Jones*, — N.C. App. —, 348 S.E.2d 819 (1986); *State v. Holland*, — N.C. —, 350 S.E.2d 56 (1986); *Laumann v. Plakakis*, — N.C. App. —, 351 S.E.2d 765 (1987).

Rule 30

Oral Argument

CASE NOTES

Quoted in *Harris v. Duke Power Co.*, — N.C. App. —, 349 S.E.2d 394 (1986).

Cited in *State v. Allison*, — N.C. —, 352 S.E.2d 420 (1987).

CODE OF JUDICIAL CONDUCT

Adopted September 26, 1973.

CANON 3

*A Judge Should Perform the Duties of His Office
Impartially and Diligently*

Legal Periodicals. — For article, "The Perils of Caesar's Wife: Special Litigation Committees v. The Judiciary; Is Anyone Above Reproach?", see 22 Wake Forest L. Rev. 57 (1987).

RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

Legal Periodicals. — For essay, "Toward a Revised Model of Attorney-Client Relationship: The Argument for Autonomy," see 65 N.C.L. Rev. 315 (1987).

CANON I

A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession.

Rule 1.1 Bar Admission and Disciplinary Matters.

Legal Periodicals. — For article, "The Lawyer As Informer," see 1986 Duke L.J. 491 (1986).

Rule 1.3 Reporting Professional Misconduct.

Legal Periodicals. — For article, "The Lawyer As Informer," see 1986 Duke L.J. 491 (1986).

CANON II

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available.

Rule 2.2 Advertising.

Legal Periodicals. — For note discussing commercial speech and disciplinary rules preventing attorney advertising and solicitation, see 65 N.C.L. Rev. 170 (1986).

For note discussing the liberalization of at-

torney commercial speech rights, in light of *Zauderer v. Office of Disciplinary Counsel*, 105 S. Ct. 2265 (1985), see 21 Wake Forest L. Rev. 1019 (1986).

Rule 2.4 Solicitation.

Legal Periodicals. — For note discussing commercial speech and disciplinary rules pre-

venting attorney advertising and solicitation, see 65 N.C.L. Rev. 170 (1986).

CANON IV**A Lawyer Should Preserve the Confidences of His Client.****Rule 4 Preservation of Confidential Information.**

Legal Periodicals. — For article, "The Lawyer As Informer," see 1986 Duke L.J. 491 (1986).

CANON V**A Lawyer Should Exercise Independent Professional Judgment on Behalf of His Client.****Rule 5.2 The Lawyer as Witness.****CASE NOTES**

Defendant's request that counsel for plaintiff be precluded from testifying at trial or that his law firm be disqualified from further representation of plaintiff would be denied, where plaintiff had not yet determined who its lay witnesses would be. If plain-

tiff subsequently determined that counsel should be called as a witness at trial, then the court, at the appropriate time, could order his withdrawal, as well as that of his law firm. *FDIC v. Kerr*, 111 F.R.D. 476 (W.D.N.C. 1986).

Rule 5.3 Avoiding Acquisition of Interest in Litigation.**CASE NOTES**

Contract to Pay for Services Needed in Case. — There is no inhibition in the law against a lawyer contracting to pay for services needed in a case he is handling. *Gualtieri v. Burleson*, — N.C. App. —, 353 S.E.2d 652 (1987).

Identifying himself as a lawyer with a disabled client was not sufficient to establish that he was not the one contracting to pay for plaintiff's services. For when a lawyer hiring an ex-

pert to help on a case says or does nothing to indicate that the obligation to pay is not his, the expert can reasonably assume that the lawyer is acting openly and in good faith, rather than evasively, and that he is the contracting party, rather than a stranger whom he has had no contact with. *Gualtieri v. Burleson*, — N.C. App. —, 353 S.E.2d 652 (1987).

CANON VII**A Lawyer Should Represent His Client Zealously Within the Bounds of the Law.****Rule 7.2 Representing the Client Within the Bounds of the Law.**

Legal Periodicals. — For article, "The Lawyer As Informer," see 1986 Duke L.J. 491 (1986).

LOCAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Revised effective July 1, 1986.

Index follows these rules.

Rule

11. Transcript acknowledgements.

47. Disclosure of corporate affiliations and financial interest.

Rule

Forms

Rule 11. Transcript acknowledgements.

Only Part of Rule Set Out. — As the rest of the rule was not affected, only the catchline is set out.

Rule 47. Disclosure of corporate affiliations and financial interest.

(d) Whenever a trade association is a party to an appeal, it shall be the responsibility of counsel for the trade association to identify all members of the association, and all affiliates of those members who are publicly owned, in conformity with Sections (a) through (c) above.

Only Part of Rule Set Out. — As the rest of the rule was not affected, it is not set out.

FORMS

Form 5. DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Editor's Note. — The reference in this form to Local Rule 17 should read "Local Rule 47."

Form 6. APPEARANCE OF COUNSEL

No. _____ Term, 19____

vs.

The Clerk will enter my appearance as counsel for the _____

Area Code & Telephone No. _____

► **Note**—Must be signed by an Attorney admitted to practice before the United States Court of Appeals for the Fourth Circuit pursuant to Internal Operating Procedure 46.1. Individual and not firm names must be signed.

Form 7. CERTIFICATE OF DEATH PENALTY CASE
FOURTH CIRCUIT RULE 22(b)

UNITED STATES DISTRICT COURT

DISTRICT	LOCATION	DOCKET NUMBER
CASE CAPTION		DATE FILED
	PETITIONER	FEE STATUS
v.		<input type="checkbox"/> PAID <input type="checkbox"/> IFP
	RESPONDENT	<input type="checkbox"/> IFP PENDING
COUNSEL FOR PETITIONER (name, address, and telephone number)		COUNSEL FOR RESPONDENT (name, address, and telephone number)

INSTITUTION OF INCARCERATION

EXECUTION DATE

EXPLANATION OF EMERGENCY NATURE OF PROCEEDINGS (attach another page if necessary)

HAS PETITIONER PREVIOUSLY FILED CASES IN FEDERAL COURT?

☐NO ☐YES (give caption, number, filing date, disposition and disposition date)

DOES PETITIONER HAVE CASES PENDING IN OTHER COURTS?

☐NO ☐YES (give court, caption, number, filing date and status)

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE PETITIONER IS PRESENTLY UNDER A SENTENCE OF DEATH AND THAT THE INFORMATION PROVIDED ON THIS FORM IS CURRENTLY ACCURATE AND CORRECT.

SIGNATURE

DATE

NOTE: The Court of Appeals periodically will request case status reports. Petitioner is under a continuing affirmative obligation to immediately notify the Fourth Circuit of any changes or additions to the information contained on this form.

Index to Local Rules of the United States Court of Appeals for the Fourth Circuit

A

- ADMINISTRATION**, Rule 8.
- AMENDMENTS**, Rule 10.
- APPOINTMENT OF COUNSEL**, Rule 2.
 - Compensation and reimbursement of expenses, Rule 6.
 - Defendant's financial status, Rule 3.
 - Duty to continue representation, Rule 5.
 - Financial status.
 - Defendants, Rule 3.
 - Generally, Rule 2.
 - Panel of attorneys, Rule 4.
 - Representation.
 - Attorney's duty to continue, Rule 5.
 - Right to counsel, Rule 1.

ASSOCIATIONS.

- Trade associations.
 - Disclosure of financial interest, Rule 47.

C

COMPENSATION AND REIMBURSEMENT OF EXPENSES, Rule 6.

CORPORATIONS.

- Disclosure of corporate affiliations and financial interest.
 - Form, Form 5.

D

- DEFINITIONS**, Rule 9.
- DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST.**
 - Form, Form 5.

E

- EFFECTIVE DATE**, Rule 11.

F

- FORMS**, Rule 7.
 - Corporations.
 - Disclosure of corporate affiliations and financial interest, Form 5.

P

- PANEL OF ATTORNEYS**, Rule 4.

R

- REPRESENTATION.**
 - Attorney's duty to continue, Rule 5.
- RIGHT TO COUNSEL**, Rule 1.
- RULES AND REGULATIONS**, Rule 7.

INTERNAL OPERATING PROCEDURES OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Adopted effective April 1, 1984.

Revised effective July 1, 1986.

Index follows these rules.

I.O.P.

3.3. Transmission of district court order.

4.1. [Deleted.]

5.1. Interlocutory orders.

8.1. Stay or injunction pending appeal.

9.1. Release prior to judgment of conviction.

10.3. Sealed records.

12.1. Organization of the court's docket.

15.1. [Deleted.]

18.1. Procedures.

21.1. Petitions for mandamus or prohibition.

I.O.P.

22.3. Petitions for rehearing in death penalty cases.

27.1. Motions.

27.2. Responses.

27.4. Single judges and emergency motions.

27.5. Motions for summary dispositions.

40.5. Panel rehearing.

42.1. Voluntary dismissals.

45.1. Clerk's office.

46.3. Appointment of counsel.

I.O.P. 3.3. Transmission of district court order.

The clerk of the district court shall transmit to the clerk of the court of appeals a copy of the order appealed from, along with copies of the notice of appeal and of the docket entries. (Added effective February 4, 1987.)

I.O.P. 4.1. Deleted, effective February 4, 1987.

I.O.P. 5.1. Interlocutory orders.

Certain interlocutory orders may be appealed as a matter of right pursuant to 28 U.S.C. § 1292(a). These include orders concerning injunctions (but not temporary restraining orders), and certain orders involving receiverships, admiralty, and patent proceedings. Filing an appeal from these orders follows the same procedure as any other civil appeal.

Other interlocutory orders may be reviewed by the Court of Appeals at its discretion, if a district judge includes in the interlocutory order the statement prescribed by 28 U.S.C. § 1292(b). Counsel must file an original and three copies of the petition for permission to appeal with the Clerk of the Court of Appeals. A Disclosure of Corporate Affiliations and Financial Interest statement must be filed with the petition and answer. See Local Rule 47, I.O.P. 47.1, and Form 5.

The Court of Appeals will initially enter a case upon its miscellaneous docket; a docket fee shall not be required unless the petition is granted. Upon granting the petition, the Court of Appeals will notify the district court by copy of the order and transfer the case to the regular docket upon payment of the appropriate fees to the district court. A notice of appeal need not be filed.

I.O.P. 8.1. Stay or injunction pending appeal.

Filing a notice of appeal does not automatically stay the operation of the judgment, order or decision of which review is sought. An application for temporary relief pending appeal should be made first to the district court. Any subsequent motion to the Court of Appeals should include copies of all previous applications for relief and their outcome. A Disclosure of Corporate Affiliations and Financial Interest statement must accompany the motion and any response unless the parties have previously filed disclosure statements with the Court in the case. See Local Rule 47, I.O.P. 47.1, and Form 5. If application to the district court for temporary relief pending appeal is not practicable, counsel must make a specific showing of the reasons application was not made to the district court in the first instance. If any party deems that parts of the record or other materials are essential to a fair presentation of the issues regarding a motion, copies of these papers must be attached to each copy of his motion. The motion will usually be considered by a panel of the Court consisting of two judges: although, if time is of the essence, a single judge resident in the state of the trial court proceeding may determine the motion or grant temporary relief until the matter can be considered by the Court. The selection of motion panels is similar to the process set forth in I.O.P. 34.2 for hearing panels. An order granting a stay or injunction pending appeal remains the effect until issuance of the mandate or further order of the Court and may be conditioned upon the filing of a supersedeas bond in the district court.

I.O.P. 9.1. Release prior to judgment of conviction.

A criminal defendant may be released in accordance with the conditions set by the district court prior to judgment of conviction. If the district court refuses to release the prisoner, or sets conditions for release that cannot be met, the order is appealable as a matter of right and will be given prompt consideration by the Court of Appeals. Counsel should submit memoranda in support of their position on appeal and, in cases involving corporate defendants, Disclosure of Corporate Affiliations and Financial Interest statements required by Local Rule 47 and I.O.P. 47.1. The appeal is usually decided without oral argument upon the materials presented by the parties. A motion for release pending determination of the appeal may be filed. The motion may be acted upon by a single judge, but the appeal itself must be submitted to a three-judge panel for decision.

I.O.P. 10.3. Sealed records.

Material contained in the record subject to a protective order remains subject to that order on appeal unless modified or amended by the Court of Appeals. Copies of materials submitted to the Court of Appeals may be subject to the protective order entered by the trial court and may be sealed by the Court of Appeals. Material subject to a protective order shall be available to counsel only if permitted by that order.

In any case involving sealed materials, at the time of filing the appendix and brief, counsel shall file a separate certification as to whether any sealed document is included in the appendix or argument relating to any sealed document is included in the brief. If the certification is affirmative, the appendix or brief will be sealed by order of this Court. (Amended effective February 4, 1987.)

I.O.P. 12.1. Organization of the court's docket.

The docket of the Court is organized into five separate divisions:

- a. Civil and bankruptcy appeals, agency cases, and original actions are designated as the 1000 docket series;
- b. Prisoner habeas corpus cases in which a sentence of death is involved are designated as the 4000 docket series;
- c. Direct criminal appeals are designated as the 5000 docket series;
- d. Prisoner appeals are designated as the 6000 docket series;
- e. Miscellaneous cases, such as petitions for leave to appeal in forma pauperis pro se petitions for writs of mandamus, are designated as the 8000 docket series;
- f. Complaints of judicial misconduct or disability are designated as the 9000 docket series;
- g. Disciplinary cases are designated as the 9500 docket series. (Amended effective February 4, 1987.)

I.O.P. 15.1. Deleted, effective February 4, 1987.

I.O.P. 18.1. Procedures.

This Court's internal operating procedures for FRAP 18 are the same as those accompanying Rules 8 and 27.

I.O.P. 21.1. Petitions for mandamus or prohibition.

An application for an extraordinary writ pursuant to 28 U.S.C. § 1651 is originated by filing an original and three copies of the petition with the Clerk of the Court of Appeals. Proof of service on the respondent judge or judges and on all parties in the trial court is required. The Clerk will not docket the petition until the prescribed docket fee of \$65.00, payable to the Clerk, U.S. Court of Appeals, has been paid or the petitioner submits a properly executed application for leave to proceed in forma pauperis. The parties are required to submit Disclosure of Corporate Affiliations and Financial Interest statements with the petition and answer. See Local Rule 47, I.O.P. 47.1, and Form 5. Strict compliance with the requirements of FRAP 21 is required even from pro se litigants.

After docketing, the Clerk shall submit the application to a three-judge panel. If the Court believes the writ should not be granted, it will deny the petition without calling for an answer. Otherwise the Court directs the Clerk to request an answer. All parties to the action in the trial court other than petitioner who oppose the relief requested are deemed respondents and shall be responsible for filing a requested answer within the time fixed by the Clerk. After an answer has been filed, the Court ordinarily will decide the petition on its merits on the materials submitted without oral argument. Occasionally, however, briefs may be requested and the matter set for oral argument.

I.O.P. 22.3. Petitions for rehearing in death penalty cases.

(a) All death penalty cases.

Once the Court's mandate has issued in a death penalty case, any petition for rehearing (with or without a suggestion for rehearing in banc) should be accompanied by a motion to recall the mandate and a motion to stay the execution.

Counsel should be aware that the process for distributing materials by the Clerk's Office ordinarily requires a minimum of three days for all members of the Court to receive a petition. Generally, the Court will not enter a stay of execution solely to allow for additional time for counsel to prepare, or for the Court to consider, a petition for rehearing, with or without a suggestion for rehearing in banc. Consequently, counsel should take all possible steps to assure that any such petition is filed sufficiently in advance of the scheduled execution date to allow it to be considered by the Court. Counsel should notify the Clerk's Office promptly of their intention to file a petition for rehearing so that arrangements can be made in advance for the most expeditious consideration of the matter by the Court.

(b) Emergency petitions.

In extraordinary circumstances, when the petition cannot be filed earlier than three days before a scheduled execution date, the Clerk's Office will endeavor to inform the members of the panel that issued the Court's decision of the filing of a petition for rehearing (with or without a suggestion for rehearing in banc) within a shorter period of time. At the direction of a panel member, similar efforts will be made to inform the full Court of the matter. The Clerk's Office will give notice to counsel by telephone of the Court's decision on such petitions.

I.O.P. 27.1. Motions.

All motions should be filed with the Clerk and comply with FRAP 27(d) and 32(b). They may be typewritten and three copies must be filed with the original. A Disclosure of Corporate Affiliations and Financial Interest statement must accompany the motion unless previously filed with the Court. See Local Rule 47, I.O.P. 47.1, and Form 5. Counsel should always review carefully the specific rule which authorizes relief to ascertain the requirements and any motion should contain or be accompanied by an supporting documents required by a specific rule. If a motion is supported by attachments, these materials should also be served and filed with each copy of the motion. The parties should not make requests for procedural and substantive relief in a single motion, but should make each request in a separate motion.

I.O.P. 27.2. Responses.

Any party may file a response to a motion within seven days after service of the motion, but a party need not respond to a motion until requested to do so by the Court. A Disclosure of Corporate Affiliations and Financial Interest statement must accompany any response to a motion unless previously filed with the Court. See Local Rule 47, I.O.P. 47.1, and Form 5. If the Court acts upon a motion without a response, any party adversely affected by such action may be application to the Court request reconsideration, vacation or modification of the Court's action.

I.O.P. 27.4. Single judges and emergency motions.

A single judge of the Fourth Circuit may entertain and decide motions, except a single judge may not dismiss or otherwise ultimately determine an appeal. Presentation of certain emergency motions can be made by application to a single judge at his resident chambers, but it is a matter of an individual judge's discretion as to whether he will entertain an emergency motion as a single judge. Applications to a single judge should ordinarily be made to a circuit judge who is resident in the state where the application originated. If time permits, counsel are urged to follow the preferred procedure of present-

ing all motions to the Clerk for presentation to the Court. Counsel should contact the Clerk's Office before making application to a single judge and copies of all papers presented to the judge should also be presented to the Clerk for filing. The action of a single judge may be reviewed by the Court or a panel thereof.

Motions filed with the Clerk may be submitted and decided by a single judge or by a two or three-judge panel of the Court. When deemed advisable, motions may be submitted to the full court for decision.

I.O.P. 27.5. Motions for summary dispositions.

Motions for summary affirmance, reversal or dismissal are reserved for extraordinary cases only and should not be filed routinely. Counsel contemplating filing a motion to dispose summarily of an appeal should carefully consider whether the issues raised on appeal are in fact manifestly unsubstantial and appropriate for disposition by motion. Motions for summary affirmance or reversal are seldom granted.

Motions for summary disposition should be made only after briefs are filed. If such motions are submitted before the completion of the briefing schedule, the Court will defer action on the motion until the case is mature for full consideration.

Motions to dismiss based upon the ground that the appeal is not within the jurisdiction of the Court or for other procedural grounds maybe filed anytime. The Court may also sua sponte summarily dispose of any appeal anytime.

I.O.P. 40.5. Panel rehearing.

The panel of judges who heard and decided the appeal will rule on the petition for rehearing. Such panel may include a senior circuit judge, or a visiting district judge or a federal appellate judge sitting in the Fourth Circuit by designation. On receipt of the votes, the judge who authored the opinion will direct the Clerk to enter an appropriate order, setting forth the vote of the panel.

If a petition for rehearing is granted, the original judgment and opinion of the Court are vacated and the case will be reheard before the original panel. The Court may direct the filing of additional briefs, or the parties may seek leave of court to file additional briefs.

I.O.P. 42.1. Voluntary dismissals.

Once an appeal has been docketed, the parties may submit a signed stipulation that the proceedings be dismissed or the appellant may move to dismiss voluntarily the appeal, specifying the terms as to payment of costs and fees. In civil cases the stipulation or motion may be signed by counsel. In criminal cases, however, the agreement or motion must be signed or consented to by the individual party appellant personally. Upon the agreement of the parties or if the motion is uncontested, the Clerk is authorized to dismiss the appeal. Contested motions will be submitted to the Court for resolution. (Amended effective February 4, 1987.)

I.O.P. 45.1. Clerk's office.

The Clerk's Office is located on the second floor of the United States Court-house in Richmond, Virginia, and is open from 8:30 a.m. to 5:00 p.m. every weekday, except federal holidays. All correspondence concerning cases pending before the Court should be addressed to:

Clerk, United States Court of Appeals for the
Fourth Circuit
United States Courthouse
Tenth and Main Streets
Richmond, Virginia 23219
Telephone 804/771-2213

The Clerk may be reached on evenings, weekends and holidays at (804) 565-2838.

I.O.P. 46.3. Appointment of counsel.

In direct criminal appeals of indigents, appointment of counsel is made upon the docketing of the appeal without prior notice to the attorney if he formerly presented the appellant. The issuance of the Criminal Justice Act Form 20 constitutes the appointment. Together with the notice of his appointment under the Criminal Justice Act, the Clerk shall send to the attorney so appointed a copy of the plan adopted by this Court under provisions of that Act. The Court will pay a maximum of \$1,000 plus reasonable expenses in direct criminal appeals. The duty of counsel appointed under the CJA extends through preparing the case for the Supreme Court by advising the appellant in writing of his right to seek review in the Supreme Court and, if the appellant so requests in writing, filing a petition for a writ of certiorari.

Assignment of counsel is discretionary in other indigent cases. Therefore, such cases receive a preliminary review before a decision is made regarding appointment of counsel. In assigning counsel, the Court may direct counsel to brief a particular issue, but counsel is free to address any additional issues which appear to him to be meritorious.

Unless compensation for legal services may become available to assigned counsel by statute, the Court will pay the attorney a maximum fee of \$500 plus expenses. To receive payment from the Court, counsel must submit to the Clerk's Office an itemized statement of expenses, with receipts, when the appeal is concluded.

Index to Internal Operating Procedures of the United States Court of Appeals for the Fourth Circuit

A

ATTORNEYS AT LAW.

Appointment of counsel, I.O.P. 46.3.

C

CLERK'S OFFICE.

Address, I.O.P. 45.1.

Hours, I.O.P. 45.1.

Location, I.O.P. 45.1.

CONVICTIONS.

Release prior to judgment of conviction, I.O.P. 9.1.

D

DEATH PENALTY CASES.

Petitions for rehearing, I.O.P. 22.3.

DISMISSALS.

Voluntary dismissals, I.O.P. 42.1.

DOCKET.

Organization of the court's docket, I.O.P. 12.1.

E

EXTRAORDINARY WRITS.

Petition for mandamus or prohibition, I.O.P. 21.1.

I

INJUNCTIONS.

Stay or injunction pending appeal, I.O.P. 8.1.

INTERLOCUTORY ORDERS.

Review of orders generally, I.O.P. 5.1.

J

JUDGES.

Single judges.

Applications to a single judge, I.O.P. 27.4.

JUDGES—Cont'd

Single judges—Cont'd

Motions before single judge, I.O.P. 27.4.

JUDGMENT OF CONVICTION.

Release prior to judgment of conviction, I.O.P. 9.1.

M

MANDAMUS.

Petition for mandamus, I.O.P. 21.1.

MOTIONS.

Emergency motions, I.O.P. 27.4.

Generally, I.O.P. 27.1.

Response to motion, I.O.P. 27.2.

Single judges, I.O.P. 27.4.

Summary disposition, I.O.P. 27.5.

O

ORDERS.

Interlocutory orders, I.O.P. 5.1.

Protective order.

Sealed records, I.O.P. 10.3.

P

PETITIONS.

Rehearing.

Death penalty cases, I.O.P. 22.3.

Panel rehearing, I.O.P. 40.5.

PROHIBITION.

Petition for prohibition, I.O.P. 21.1.

PROTECTIVE ORDER.

Sealed records, I.O.P. 10.3.

R

RECORD ON APPEAL.

Sealed records, I.O.P. 10.3.

REHEARING.

Petition for rehearing.

Death penalty cases, I.O.P. 22.3.

INTERNAL OPERATING PROCEDURES

REHEARING—Cont'd

Petition for rehearing—Cont'd
Panel rehearing, I.O.P. 40.5.

RELEASE.

Judgment of conviction.
Prior to judgment of conviction,
I.O.P. 9.1.

**RESPONSES TO MOTIONS, I.O.P.
27.2.**

S

STAYS.

Injunction or stay pending appeal,
I.O.P. 8.1.

STIPULATIONS.

Voluntary dismissals, I.O.P. 42.1.

SUMMARY DISPOSITION.

Motions, I.O.P. 27.5.

W

WRITS.

Extraordinary writs.
Petitions for mandamus or
prohibition, I.O.P. 21.1.

PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

In Implementation of The Criminal Justice Act

Effective December 4, 1984.

Index follows this Plan.

The Judicial Council of the Fourth Circuit adopts the following plan, in implementation of the Criminal Justice Act.

I. RIGHT TO COUNSEL

1. *Direct Appeals:* In every direct appeal involving a defendant

(a) who is charged with a felony or misdemeanor (other than a petty offense, and even for a petty offense if the defendant faces the likelihood of loss of liberty, if convicted), or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor, or with a violation of probation, or

(b) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces the loss of liberty, any federal law requires the appointment of counsel, whether the appeal be by a defendant from a judgment of conviction or from an order revoking probation, or by the United States from a judgment of acquittal or dismissal, a defendant shall be entitled to be represented by counsel as a matter of right.

In these cases, unless an application for the appointment of counsel has already been received, or notice of appearance has been filed by retained counsel, the clerk of this court shall promptly notify the defendant of his right to counsel and shall inform him that counsel will be appointed if he is financially unable to obtain adequate representation. Where an attorney had previously been appointed to represent the defendant in district court, that attorney shall be reappointed, without prior notice, upon the docketing of the appeal in this court. If there is no such reappointment, either because defendant appeared pro se or was represented by retained counsel in the district court, the clerk shall appoint the attorney of record in the district court, where appropriate, or select an appointee from a panel of approved attorneys.

2. *Collateral Proceedings:* In an appeal in a collateral proceeding brought by the petitioner from an order denying the relief requested pursuant to 28 U.S.C. §§ 2241, 2254, or 2255, a petitioner shall not be entitled to be represented by counsel as a matter of right. In these cases, counsel will be appointed only after the court has decided to hear the case on the merits, as in the granting of leave to appeal or the issuance of a certificate of probable cause. However, in an appeal brought by the United States or a state from an order granting the relief requested, a petitioner shall be entitled to representation as a matter of right.

FOURTH CIRCUIT PLAN FOR CRIMINAL JUSTICE ACT

Similarly, in an appeal under 18 U.S.C. § 4245, a defendant shall not be entitled to be represented by appointed counsel, unless the appeal is taken by the United States.

In any case brought pursuant to 28 U.S.C. § 2241, 2254, or 2255, the court may, on motion of the petitioner or on its own motion, appoint counsel where the court determines that (a) petitioner is financially unable to obtain adequate representation and (b) the interests of justice require legal representation, as when petitioner needs the assistance of counsel to go forward with an apparently meritorious petition. The clerk shall thereupon appoint the attorney of record in the district court, where appropriate, or select an appointee from a panel of approved attorneys. This process also applies to cases involving an appeal under 18 U.S.C. § 4245.

Where a petitioner is under sentence of death, the clerk shall appoint counsel upon receipt of the notice of appeal.

II. APPOINTMENT OF COUNSEL

1. *Court Order*: Every appointment of counsel pursuant to the Criminal Justice Act and this Plan shall be made by an order of this court. A prerequisite to appointment shall be an affirmative finding by the court that a defendant is financially unable to employ counsel. However, where counsel was appointed in the lower court, this court will presume, until reason to the contrary appears, that the defendant remains financially unable to retain counsel, and no such findings shall be required.

The selection of counsel under the Criminal Justice Act shall be the exclusive responsibility of the court, and no person entitled to court-appointed counsel shall be permitted to select counsel to represent him.

2. *Retroactivity*: An appointment may be made retroactive to include any representation furnished to an indigent by an attorney prior to appointment pursuant to this Plan.

3. *Scope*: A person for whom counsel is appointed shall be represented at every stage of the proceedings, through appeal, including ancillary matters appropriate to the proceedings and a petition for writ of certiorari to the Supreme Court.

4. *Substitution of Counsel*: The court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings. The total compensation to be paid both attorneys shall not exceed the statutory maximum for one appointment, unless the case involves extended or complex representation.

5. *One Attorney for Multiple Defendants*: In appeals involving multiple defendants, separate counsel will normally be appointed for each defendant, unless there has been a waiver on the record by the defendants or good cause is shown. If one attorney is appointed to represent more than one defendant, a separate order of appointment shall be entered for each defendant. The attorney may be compensated for his services up to the maximum for each defendant represented; however, time spent in common on one or more defendants must be prorated.

6. *Multiple Appointments for One Defendant*: In capital cases, and in other cases of extreme difficulty where the interest of justice so require, the court may appoint an additional attorney to represent a defendant. Each attorney so appointed shall be eligible to receive the maximum compensation allowed under the Criminal Justice Act.

7. *Defendant's Objection to Appointed Attorney*: The court shall give consideration to a defendant's expression of dissatisfaction with his counsel only if specific grounds for dissatisfaction are stated. Appointed counsel shall be

relieved only when the court, in its discretion, determines that the interests of justice so require.

8. *Attorney's Motion to Withdraw:* An attorney appointed to represent a defendant in the lower court is generally obliged to continue that representation upon appeal. An attorney who does not desire to continue the representation must file a motion to withdraw with the clerk of this court promptly after filing the notice of appeal. The motion must set forth specific grounds for granting withdrawal; defendant's dissatisfaction with counsel is not sufficient grounds. Also, should counsel, during the course of an appeal, encounter a specific reason which suggests the inappropriateness of further representation of the defendant, counsel should promptly file a motion to withdraw. In any event, counsel has a duty to continue to represent the defendant until a motion to withdraw is granted.

III. DEFENDANT'S FINANCIAL STATUS

1. *Filing Application:* A defendant who, in the district court, was represented by employed counsel, or was unrepresented, or was represented by appointed counsel but has nonetheless been requested to file a new application in this court, may apply to this court for the appointment of counsel. Such application shall be accompanied by an affidavit disclosing the applicant's financial status and any resources available to him to compensate counsel.

2. *Re-examination by Court:* The court, at any time, may re-examine a defendant's financial status as it bears upon the appointment of counsel and, thereupon, (a) appoint counsel to represent the defendant, if the defendant is not already represented or is unable to pay previously retained counsel, (b) terminate the appointment of counsel, or (c) require a partial payment of counsel fees by the defendant. The defendant shall furnish such financial and related information as may be requested during the re-examination, unless he desires to proceed without counsel.

3. *Insufficiency of Funds; Partial Payment:* If a defendant's net financial resources and anticipated income are in excess of the amount needed to provide him and his dependants with the necessities of life and to provide for his release on bond, but are insufficient to pay fully for retained counsel, this court will find the defendant eligible for the appointment of counsel but will direct him to pay the available excess funds to the clerk at the time of appointment. The court may increase or decrease the amount of such payments and impose appropriate conditions, where applicable. All such payments by the defendant shall be received pursuant to the prescriptions of subsection (f) of the Criminal Justice Act.

4. *Family Resources:* Funds and property standing in the name of, or held by, members of a defendant's family will be considered available for the payment of the fees of retained counsel if there is a finding, upon a reasonable basis of fact, that the family has indicated a willingness and a financial ability to pay all or part of the costs of representation. The initial determination of a defendant's eligibility for the appointment of counsel should be made without regard to family resources unless the family plans and is financially able to retain counsel promptly.

5. *Attorney's Information:* If at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal services in connection with his representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall so advise this court.

IV. PANEL OF ATTORNEYS

1. *Composition:* The clerk, subject to this court's approval, shall prepare a list of attorneys from which appointments shall be made. Attorneys, to be eligible for appointment, must be admitted to practice before this court under Rule 46 of the Federal Rules of Appellate Procedure, and must be competent to provide adequate representation to those persons entitled to counsel under the Criminal Justice Act. In preparing the list, the clerk may review and consider the panels approved for use in the several District Courts in the Fourth Circuit, the recommendations of the Bar Associations, Legal Aid Agencies, and Defender Organizations, if any, and the court's own experience with attorneys.

2. *Periodic Revision:* The panel shall be revised periodically to ensure an adequate number of competent attorneys to provide effective representation to all persons entitled to appointed counsel.

3. *Appointments:* Appointments shall be made by the clerk on a rotational basis, subject to this court's discretion. Consideration will be given to the nature of the case, the place of the trial, the residence of the indigent person if on bail, the place of confinement, and other relevant matters.

V. ATTORNEY'S DUTY TO CONTINUE REPRESENTATION

1. *Trial Counsel:* Every attorney, including retained counsel, who represented a defendant in the district court shall continue to represent the client after termination of those proceedings, unless relieved of further responsibility by this court. Where counsel has not been relieved:

If there is a judgment of conviction or an order revoking probation, counsel shall inform the defendant of his right to appeal and of his right to have counsel appointed on appeal. If so requested by the defendant, counsel shall file a timely notice of appeal. Thereafter, unless the defendant otherwise so instructs, counsel shall take appropriate and timely steps to perfect and present the appeal, including, where appropriate, the ordering of such part of the transcript as may be necessary for consideration on appeal.

Similarly, if there is an appeal by the United States from an order or judgment adverse to it, counsel shall continue to represent the client.

In any case brought pursuant to 28 U.S.C. §§ 2241, 2254, or 2255 which results in an order by the district court denying the relief requested, counsel shall inform the petitioner of his right to appeal and of the court's authority to appoint appellate counsel in its discretion. If so requested by the petitioner, counsel shall file a timely notice of appeal and a motion for appointment of appellate counsel, and counsel's duty is thereby ended. On the other hand, if petitioner is granted the relief requested, counsel shall continue to represent the petitioner in the event the respondent appeals the judgment.

2. *Appellate Counsel:* Every attorney, including retained counsel, who represents a defendant in this court shall continue to represent his client after termination of the appeal unless relieved of further responsibility by the Supreme Court. Where counsel has not been relieved:

If the judgment of this court is adverse to the defendant, counsel shall inform the defendant, in writing, of his right to petition the Supreme Court for a writ of certiorari. If the defendant, in writing, so requests, counsel shall prepare and file a timely petition for such a writ and transmit a copy to the defendant. Thereafter, unless otherwise instructed by the Supreme Court or its clerk, or unless any applicable rule, order or plan of the Supreme Court

shall otherwise provide, counsel shall take whatever further steps are necessary to protect the rights of the defendant, until the petition is granted or denied.

Similarly, if the United States seeks a writ of certiorari to review a judgment of this court, counsel shall take all necessary steps to oppose the United States' petition.

Similarly, in any proceeding brought pursuant to 28 U.S.C. §§ 2241, 2254, or 2255 which results in an order by this court denying the relief petitioner requested, appointed counsel shall take whatever steps necessary to protect the rights of the defendant in the Supreme Court, until a petition for writ of certiorari is granted or denied.

VI. COMPENSATION AND REIMBURSEMENT OF EXPENSES

1. *Voucher*: Upon the completion of service in this court, appointed counsel shall submit a voucher for compensation and reimbursement on the Criminal Justice Act form currently approved by the Administrative Office of the United States Courts. Vouchers shall be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The clerk will determine the amount of compensation and reimbursement to be paid. The approved voucher will then be reviewed by the Circuit Executive, signed by the Chief Judge, and forwarded to the Administrative Office for payment or further handling.

2. *Hourly Rates*: Counsel may be compensated at rates not exceeding \$60.00 per hour for time expended in court and \$40.00 per hour for time reasonably expended out of court. Time spent awaiting oral argument is considered to be time expended out of court.

3. *Maximum Compensation Allowable*: In any direct appeal, except in appeals from probation revocation proceedings, the total compensation, exclusive of expenses, shall not exceed \$2,000.00 for an attorney's services rendered in this court.

In any collateral proceeding, or in any case where a post-trial motion has been made after the entry of judgment, or in appeals from probation revocation proceedings, the total compensation, exclusive of expenses, shall not exceed \$500.00 for an attorney's services rendered in this court.

In all cases where there has been a substitution of counsel, or where multiple defendants have been represented by one attorney or multiple appointments have been made for one defendant, total compensation shall be determined pursuant to Section II, Paragraphs 4, 5, and 6.

Payment in excess of the \$500.00 and the \$2,000.00 limitations may be made to provide fair compensation in a case involving extended or complex representation, upon approval by the Chief Judge of this court. Counsel claiming in excess of the statutory maximum must submit with his voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in a complex or extended case, and that the excess payment is necessary to provide fair compensation. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex". If more time is reasonably required for total processing than would normally be required in the average case, the case is "extended".

4. *Reimbursable Expenses*: Counsel shall be entitled to reimbursement for reasonably incurred out-of-pocket expenditures. Travel by privately owned automobile should be claimed at the mileage rate currently applicable to

FOURTH CIRCUIT PLAN FOR CRIMINAL JUSTICE ACT

federal employee travel, plus parking fees and tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis. Necessary airline travel will be reimbursed only at coach class rates. Expenditures for meals and lodging, as well as for telephone toll calls, telegrams, and copying are reimbursable. (The cost of photocopying or similar copying services is reimbursable, while the cost of printing is not. Where photocopying or similar, copying services are performed in counsel's office, the reimbursement shall be limited to out-of-pocket expenses, and shall not include an allowance for general office overhead.) Compensation paid to law students for legal research is reimbursable, but expenses incurred by the law student in assisting counsel are not. Receipts are required for public transportation, lodging, non-office copying services, and any other expense in excess of \$50.00.

5. *Representation to the Supreme Court:* Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari to the Supreme Court, and in the protection of the defendant's rights up until the time that Court disposes of a petition, should be included in the voucher for services performed in this court.

6. *Number of Copies:* Appointed counsel is required to file six copies of the brief and five copies of the appendix with the clerk of the court, with service of one copy on counsel for each party separately represented. Appointed counsel shall be entitled to reimbursement for the cost of photocopying required copies.

7. *Non-reimbursable Expenses:* General office overhead, personal items and non-legal personal service for the person represented, filing fees, services of process, and printing are non-reimbursable. (A person represented under the Criminal Justice Act is not required to pay filing fees nor costs, nor security therefor, nor must he file the 28 U.S.C. § 1915(a) affidavit, for an appeal.)

8. *Authorized Transcripts:* Authorized transcripts should not be claimed in the voucher by an attorney. The Administrative Office will pay the appropriate court reporter directly.

9. *Interim Payment of Expenses:* This court, in rare cases, will entertain requests for interim reimbursement of extraordinary and substantial expenses.

10. *Direct Payment from Person Represented:* No appointed counsel shall accept a payment or a promise of payment from a defendant for representation in this court without prior authorization from the court on an appropriate Criminal Justice Act form.

11. *Public Defender:* Where a defendant is represented by a federal public defender, the defender shall be compensated solely by his federal salary and shall not submit a Criminal Justice Act form for compensation.

12. *Non-appointed Co-counsel:* Non-appointed attorneys may not be compensated, but an appointed attorney may claim compensation for services furnished by a partner, associate, or co-counsel, within the maximum compensation allowed to the appointed attorney.

VII. RULES, REGULATIONS, FORMS

1. *Rules and Regulations:* This Plan shall be subject to and held to have been amended pro tanto by any rule or regulation adopted by the Judicial Conference of the United States concerning the operation of plans under the Criminal Justice Act.

FOURTH CIRCUIT PLAN FOR CRIMINAL JUSTICE ACT

The Judicial Council or this court may adopt rules or regulations concerning the operation of this Plan, which, when promulgated, shall have the same force as provisions of this Plan.

2. *Forms*: Forms approved by the Administrative Office of the United States Courts for use in the administration of the Criminal Justice Act shall be used whenever appropriate. Where there are no approved forms, this court may approve and require the use of designated forms or other instruments.

VIII. ADMINISTRATION

1. *Generally; Clerk's Office*: Any act to be done by the court may be done by any judge of the court, by the clerk, or by a deputy clerk pursuant to delegated authority.

IX. DEFINITIONS

1. *Supreme Court*: Supreme Court of the United States.

2. *Administrative Office*: Administrative Office of the United States Courts.

3. *This court; the court*: The United States Court of Appeals for the Fourth Circuit.

4. *Criminal Justice Act*: Criminal Justice Act of 1964, 18 U.S.C. § 3006A, as amended by Public Law 91-447, Approved October 14, 1970; Public Law 93-412, Approved September 3, 1974; Public Law 97-164, Approved April 2, 1982.

5. *Defendant; Defendants*: Where appropriate in this Plan, the word "defendant" or "defendants" shall be construed to include petitioner or petitioners in a collateral proceeding.

6. *Judicial Council*: Judicial Council of the Fourth Judicial Circuit of the United States.

X. AMENDMENTS

This Plan may be amended at any time by the Judicial Council effective when a copy of the amendatory resolution is filed with the Administrative Office or at such later date as may be specified in the resolution.

XI. EFFECTIVE DATE

This Plan shall become effective December 4, 1984.

Index to Plan of the United States Court of Appeals for the Fourth Circuit in Implementation of the Criminal Justice Act

A

ADMINISTRATION, Plan, VIII.

AMENDMENTS OF PLAN, Plan, X.

APPOINTMENT OF COUNSEL.

Attorney's motion to withdraw, Plan, II.

Defendant's objection to appointed attorney, Plan, II.

Multiple appointments for one defendant, Plan, II.

One attorney for multiple defendants, Plan, II.

Retroactivity, Plan, II.

Scope, Plan, II.

Substitution of counsel, Plan, II.

ATTORNEY'S DUTY TO CONTINUE REPRESENTATION.

Appellate counsel, Plan, V.

Trial counsel, Plan, V.

B

BRIEFS.

Number of copies, Plan, VI.

C

COMPENSATION.

Hourly rates, Plan, VI.

Maximum compensation allowable, Plan, VI.

Non-appointed attorneys, Plan, VI.

Public defender, Plan, VI.

Voucher, Plan, VI.

D

DEFINITIONS, Plan, IX.

DEPARTMENT OF COUNSEL.

Court order, Plan, II.

E

EFFECTIVE DATE, Plan, XI.

F

FINANCIAL STATUS OF DEFENDANT.

Family resources, Plan, III.

Filing application, Plan, III.

Insufficiency of funds, Plan, III.

Reexamination by court, Plan, III.

FORMS, Plan, VII.

P

PANEL OF ATTORNEYS.

Appointments, Plan, IV.

Composition, Plan, IV.

Periodic revision, Plan, IV.

R

REIMBURSEMENT OF EXPENSES.

Interim payment, Plan, VI.

Non-reimbursable expenses, Plan, VI.

Reimbursable expenses, Plan, VI.

Voucher, Plan, VI.

RIGHT TO COUNSEL.

Collateral proceedings, Plan, I.

Direct appeals, Plan, I.

RULES AND REGULATIONS, Plan, VII.

T

TRANSCRIPTS.

Authorized transcripts, Plan, VI.

RULES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Effective August 1, 1980.

As Amended to January 1, 1987.

Index follows these rules.

Rules of Court

I. General Rules

RULE 2.00 Attorneys.

2.02. Eligibility.

2.03. Procedure for Admission.

I. General Rules

Rule 2.00 Attorneys.

Rule 2.02: *Eligibility*. A member in good standing of the bar of the Supreme Court of North Carolina is eligible for admission to the bar of this court. (Amended effective January 1, 1987.)

Rule 2.03: *Procedure for Admission*. Before being presented to the court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

(a) Is a member in good standing of the bar of the Supreme Court of North Carolina, and,

(b) Has studied the Federal Rules of Civil Procedure and Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this court.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the bar of this court that the applicant is of good moral character and professional reputation and meets the requirements for admission. An applicant may be admitted to practice in this court by a judge or magistrate upon oral motion by a member of the bar of this court. If the motion for admission is granted, the applicant shall take the following oath or affirmation:

I do solemnly swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will demean myself as an attorney of this court, uprightly and according to law. So help me God.

Following the administration of the oath, the application shall be signed by the judge or magistrate and the applicant shall file the application, accompanied by a fee of \$25.00, with the clerk. The clerk shall then issue the applicant a certificate of admission to the bar of this court. Upon the filing of a properly certified and executed application accompanied by the admission fee of \$25.00,

the clerk may accept for filing papers signed by the applicant. However, no applicant shall make an appearance on behalf of a client until the applicant has taken the oath. (Amended effective January 1, 1986; January 1, 1987.)

Rule 3.00 Court Schedule and Conduct of Business.

CASE NOTES

Cited in Great Am. Ins. Co. v. Nye, 64 Bankr. 759 (Bankr. E.D.N.C. 1986).

Rule 4.00 Motion Practice.

CASE NOTES

Cited in Sterling Forest Assocs. v. Barnett-Range Corp., 643 F. Supp. 530 (E.D.N.C. 1986).

Index to Rules of the United States District Court for the Eastern District of North Carolina

A

ATTORNEYS AT LAW.

Admission to bar of court.

Eligibility, Rule 2.02.

Procedure, Rule 2.03.

Eligibility.

Admission to bar of court, Rule 2.02.

Oaths.

Admission to bar of court, Rule 2.03.

Procedure for admission to bar, Rule
2.03.

O

OATHS.

Attorneys at law.

Admission to bar of court, Rule 2.03.

RULES OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Adopted effective January 1, 1985.

As amended to April 6, 1987.

Index follows these rules.

Table of Rules

II. Civil Rules

RULE

215. Settlement

RULE

VI. Court-Annexed Arbitration

603. Preliminary procedure

V. Rules of Disciplinary Enforcement

511. Appointment of counsel

II. Civil Rules

Rule 203

Motion Practice

CASE NOTES

Cited in *Barlow v. Esselte Pendaflex Corp.*, 111 F.R.D. 404 (M.D.N.C. 1986); *Phillips Factors Corp. v. Harbor Lane of Pensacola, Inc.*, 648 F. Supp. 1580 (M.D.N.C. 1986).

Rule 205

Discovery

CASE NOTES

Where *pro se* plaintiff had not made any attempt to settle the dispute and failed to show that defendant's proposed settlement was unfair, the court would deny her motion to compel, due to her failure to follow this rule, without prejudice to her filing a new motion within 15 days. *Barlow v. Esselte Pendaflex Corp.*, 111 F.R.D. 404 (M.D.N.C. 1986).

Rule 212

Class Actions

CASE NOTES

Stated in *Price v. Cannon Mills*, 113 F.R.D. 66 (M.D.N.C. 1986).

Rule 215

Settlement

Attorneys or pro se litigants shall immediately notify the clerk of an agreement in principle reached by the parties which resolves the litigation as to any or all parties. Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all jurors costs, including marshal's fees, mileage and per diem, may be assessed equally against the parties or otherwise assessed as determined by the court, unless the clerk's office is notified at least one full business day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

V. Rules of Disciplinary Enforcement

Rule 511

Appointment of Counsel

Whenever counsel is to be appointed by these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition, the court may appoint as counsel the disciplinary agency of the Supreme Court of North Carolina or any other disciplinary agency having jurisdiction. Alternatively, the court may appoint as counsel one or more members of the Bar; provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or who has been engaged as an adversary of the respondent-attorney in any manner. Counsel, once appointed, may not resign unless permission to do so is given by the court. Nothing in this rule limits the Court's authority to refer any matter to the appropriate state bar for investigation, prosecution of disciplinary proceedings, or reinstatement.

VI. Court-Annexed Arbitration

Rule 603

Preliminary Procedure

(c) *Dispositive Motions.* In a case selected for mandatory arbitration, summary judgment and other dispositive motions, except motions based upon lack of jurisdiction or relating to venue, will not be ruled upon by the court, and need not be filed until after the case has proceeded through an arbitration hearing and has returned to the court calendar in accordance with Rule 610. If a demand for trial de novo is filed, parties shall file any notices of intention to file dispositive motions within twenty (20) days after the filing of demand for

trial de novo. Motions shall be filed within sixty (60) days after the filing of a demand for trial de novo.

Only Part of Rule Set Out. — As the rest of the rule was not affected, it is not set out.

Index to Rules of the United States District Court for the Middle District of North Carolina

A

ARBITRATION.

Preliminary procedure.

Dispositive motions, Rule 603, (c).

D

DISCIPLINARY ENFORCEMENT.

Appointment of counsel, Rule 511.

M

MOTIONS.

Arbitration.

Preliminary procedure in
court-annexed arbitration.

Dispositive motion, Rule 603, (c).

S

SETTLEMENTS.

Generally, Rule 215.

RULES OF THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

As Amended to November 26, 1986.

Index follows these rules.

Part I. Commencement of Case; Proceedings
Relating to Petition and Order for Relief

RULE
LBR-1107 Mailing Matrix Required

Part I. Commencement of Case; Proceedings Relating to Petition and Order for Relief

Rule No. LBR-1007

Mailing Matrix Required

(a) *Matrix Required Upon Filing.*

As a requirement of filing, all Chapter 7, 11 and 12 petitions must be accompanied by an alphabetized matrix containing the names and addresses of all parties-in-interest, including the debtor, debtor's attorney, creditors and appropriate governmental agencies. The matrix shall be prepared according to the forms and instructions provided upon request by the Clerk's Office.

(b) *Matrix Required Upon Conversion.*

As a requirement of converting a Chapter 13 case to any other bankruptcy relief chapter, the debtor must file, at the time of conversion, an alphabetized matrix containing the names and addresses of all parties-in-interest, including the debtor, debtor's attorney, creditors and appropriate governmental agencies. The matrix shall be prepared according to the forms and instructions provided upon request by the Clerk's Office. (Amended November 26, 1986.)

Index to Rules of the United States Bankruptcy Court for the Middle District of North Carolina

P

PETITIONS.

Mailing matrix.

Contents, LBR-1007.

Required, LBR-1007.

